IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No. 400 of 1992

Date of decision : September 5, 2007

State of H.P. **…Appellant.**

Versus

Piyush Kumar Jain and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting?

For the Appellant	**:**	**Mr. Som Dutt Vasudeva, Additional Advocate General, with Mr. D.S. Nainta, Deputy Advocate General.**
		Mr. Sandeep Vashishta, Advocate, vice Mr. Vinod Sharma, Advocate, for the complainant.
For the Respondents	**:**	**Mr. K.D. Sood, Advocate.**
		Respondents in person.

Surjit Singh, Judge(Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for offences punishable under Sections 323 and 326 read with Section 34 IPC for allegedly voluntarily causing grievous hurt by means of a piece of broken glass pane and also some simple injuries to one Chiranji Lal Kapoor.

3. Trial Court framed the charge against all the three respondents on 23.12.1991 and adjourned the matter to 26.3.1992 for recording the evidence of the prosecution. Injured himself was summoned for 26.3.1992. He was not present on that date. Part-B of the trial Court record shows that he was not served for that day,

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Whether reporters of the local papers may be allowed to see the judgment?

because the name of the injured had been written on the summons as ‘Prakshi Lal’ instead of ‘Chiranji Lal’. The Court then passed the order on 26.3.1992 that he be produced, alongwith remaining witnesses of the prosecution, on the next following day, i.e. 27.3.1992. When the matter was taken up on the next following day, the learned APP made a statement closing the evidence and giving up the injured on the plea that the wife of the injured had avoided to disclose the latest address of the injured. The trial Magistrate without looking into the report that was made on the summons issued for 27.3.1992 accepted the statement of the APP and closed the evidence. In fact the Constable, who went to effect service of summons issued for appearance of the injured on 27.3.1992, reported that the injured was stated to have gone to Mandi about four months back and had not returned. He did not report that the wife of the injured had refused or avoided to give the Mandi address of the injured. The trial Court, thus, apparently acted in hot haste.

4. The offence was of very serious nature. The allegation was that the injured was initially pushed against the glass show case resulting in injuries on his head and nose and the breaking of the glass-pane and then a broken piece of glass was picked up and a blow was dealt on the right wrist of the injured and this injury on the right wrist was dangerous to life. The trial Magistrate without realizing the seriousness and the gravity of the allegation closed the evidence of the prosecution on the very first opportunity afforded for the production of the prosecution evidence. The learned APP also did not act carefully. He too did not bother himself to go through the report of the Constable made on the summons issued for the appearance of the injured on 27.3.1992.

5. Looking to all these facts, we accept the appeal, set aside the judgment of the trial Court acquitting the respondents of the charges and remand the case to the trial Magistrate with a direction to decide the same afresh after affording due opportunity to the prosecution to examine the injured. Parties are directed to appear before the trial Court on 26th September, 2007.

(Surjit Singh), J

September 5, 2007(sd) **(Surinder Singh), J**